

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

NOV 28 2007

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

JOEL MENDEZ-MORALES,

Petitioner,

v.

MICHAEL B. MUKASEY, \*\* Attorney  
General,

Respondent.

No. 06-71668

Agency No. A98-607-940

MEMORANDUM \*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Argued and Submitted October 17, 2007  
Pasadena, California

Before: FERNANDEZ and WARDLAW, Circuit Judges, and MILLS \*\*\*, District  
Judge.

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

\*\* Michael B. Mukasey is substituted for his predecessor, Alberto R.  
Gonzales, as Attorney General of the United States, pursuant to Fed. R. App. P.  
43(c)(2).

\*\*\* The Honorable Richard Mills, Senior United States District Judge for  
the Central District of Illinois, sitting by designation.

Joel Mendez-Morales, a native and citizen of Mexico who escaped a Mexican prison and fled to the United States, petitions for review of an order of the Board of Immigration Appeals (“BIA”) affirming an Immigration Judge’s (“IJ”) denial of his application for deferral of removal under the Convention Against Torture (“CAT”). Mendez-Morales testified that he had been tortured to extract a confession to a charge of attempted murder and that prison officials continued to torture him while he remained imprisoned.

We have jurisdiction to hear Mendez-Morales’s petition. Because Mendez-Morales committed the predicate felony in Mexico, before his entry into the United States, the jurisdiction-stripping provision contained in 8 U.S.C. § 1252(a)(2)(C) does not apply. Section 1252(a)(2)(C) deprives us of jurisdiction where an “alien . . . is convicted of an aggravated felony at any time after admission.” 8 U.S.C. § 1227(a)(2)(A)(iii). It is uncontested that the aggravated felony at issue occurred before Mendez-Morales’s admission to the United States.

We review the BIA’s determination that an applicant has not demonstrated eligibility for relief under CAT for “substantial evidence.” *Zhou v. Gonzales*, 437 F.3d 860, 871 (9th Cir. 2006). The BIA found that Mendez-Morales was not a credible witness. An adverse credibility determination must be based on “specific, cogent reasons” found in the record. *Singh v. Gonzales*, 439 F.3d 1110, 1105 (9th

Cir. 2006). The REAL ID Act of 2005 (“the REAL ID Act”) describes the bases upon which the BIA may make an adverse credibility determination in applications for relief, such as Mendez-Morales’s, filed after May 11, 2005. 8 U.S.C. § 1158(b)(1)(B)(iii). The REAL ID Act, however, did not alter the substantial evidence standard of review.

Here, the BIA correctly affirmed the IJ’s adverse credibility determination, which was based upon specific and cogent reasons satisfying our precedent. As the BIA noted, the IJ had properly based the adverse credibility finding on Mendez-Morales’s shifting testimony as to whether he appeared before a judge to complain of his torture. At his credible fear interview, Mendez-Morales told immigration officials that “the judge asked me if I wanted to confront the people who [hit me] and I said yes but they never gave me the chance to confront them.” Before the IJ, however, Mendez-Morales testified that he “never even appeared before a judge.” This contradiction creates a “legitimate articulable basis to question the petitioner’s credibility.” *Mahli v. INS*, 336 F.3d 989, 992 (9th Cir. 2003).

Without credible testimony, Mendez-Morales did not meet his burden of proof to establish that he “more likely than not” would be tortured if removed to Mexico. 8 C.F.R. § 208.16(c)(2). The BIA properly denied his CAT claim.

**PETITION FOR REVIEW DENIED.**